

Approach to taking the mbe.

First of all, you need to know that each Mbe question is broken down into three parts.

1. The fact pattern.
2. The call of the question.
3. The answer choices.

The next consideration is the number of questions which are generally applicable to each topic covered on the MBE.

Evidence Law: 33 questions.
Contracts: 34 questions.
Constitutional Law: 33 questions.
Real Property: 33 questions.
Torts: 34 questions.
Criminal Law: approximately 20-21 questions.
Criminal Procedure: approximately 11-12 q's.

There is a basic four step approach which is applicable to all MBE questions generally. Those steps are:

1. Scan the answer choices first.
2. Read the fact pattern looking for triggers.
3. Read the call of the question.
4. Select the BEST answer for the facts provided.

In greater detail, with respect to scanning the answers first; this will give you great insight to what area of the law you will be dealing with. That, in turn, will help you to narrow your focus when approaching the question. This is the fastest way to determine what law is at issue, which will save you precious time!

With respect to the second step, reading the fact pattern looking for triggers; you should circle the legal terms and words, or triggers as I like to call them. This will help you recognize facts, words, and terms that apply to specific answer choices. As we will soon cover in greater detail, each MBE subject has its own unique approach.

Furthermore, in all MBE questions, look for transitional words and phrases. (e.g., if, only if, unless, if only, however if, although, because, and, or, assume that). Transitional words can turn questions upside down and cause confusion. In addition, many important legal words and phrases will follow transitional phrases. So, when you're reading the fact pattern focusing on triggers, the transition will be easy to spot and handle.

With respect to the third step; reading the call of the question, you must do so carefully. This is because the call of the question will address the specific inquiry which you will be required to answer. Be cautious here, you must discern what the examiners are truly asking of you. For instance, is it common law, modern law, majority law, minority law,

or statutory law applicable in the question at hand.

In regards to the fourth step; selecting the best answer based on the facts provided, often times there is more than one correct answer. Thus, you must do. The best of the given choices, as per the facts provided. Do this task by the process of elimination. That is to say, eliminate the choices that you know are incorrect before honing in on the correct answer. It is often times easy to eliminate two of the four answer choices. This significantly increases your odds of selecting the best choice.

Moving on, we will now focus on the six step approach to evidence questions. For the MBE note that you will follow the federal rules of evidence.

1. What type of case is at issue?
 - Is it a criminal case?
 - Is it a civil case?
2. Where in the trial process are we?
 - Preliminary hearing?
 - Grand Jury hearing?
 - Direct examination?
 - Cross examination?
 - Re-direct?
3. Who is on the witness stand testifying?
 - Plaintiff?
 - Defendant?
 - Actual witness to the crime or accident?
 - Expert witness?
4. What type of evidence is at issue?
 - Sensory?
 - Sight--what someone saw.
 - Sound--what someone heard/said.
 - Scent--what someone smelled.
 - Taste--what someone tasted.
 - Touch--what someone felt.
 - Physical Evidence?
 - Book of authority, business docs, note, photo, gun, knife, drugs etc.
 - Character Evidence?
 - Specific act
 - Opinion.
5. Find the hearsay exception or exemption.
 - Remember there is a difference between the 2 and they eat up the general rule.

6. Is it Relevant or have Probative value?

Now we come to the six step approach to contract law. Remember to follow the common law for services, and the UCC for sale-of-goods contracts.

1. Narrow your focus on what's important in the pattern--triggers.

Dates (create a time line)
Dollar amounts (\$500 UCC sale of goods)
Words of offer, acceptance, rejection,
consideration and conditions.

2. Is the contract for services or goods?

Services are governed by the common law.
Sale of goods covered by UCC.

3. Is it written or verbal?

Contracts that must be in writing are:
marriage, one year to complete, sales of goods
over \$500, and sales of real estate.

4. Who are the contracting parties?

Merchants.
Non-merchants.
remember special merchant rules per
UCC.

5. Are there any third party rights?

6. What are the possible defenses.

Now we come to the three step approach to Constitutional Law. Follow the federal Constitution on the MBE.

1. The What.

What level of government is trying to pass or
enforce a law. 5 levels to be aware of:

1. City

2. State

Federal govt has 3 branches:

3. Congress

4. Executive (president)

5. Judicial (The Supreme Court)

Thus you must ask yourself, do they have the power to enforce this law or are they
usurping another governmental entities power? And, what part of the Constitution gives

them power?

2. The Who.

Who are they trying to pass or enforce the law against?

One government over another?
government over religion/church/group?
what is their scrutiny level?
government over individual rights?
are fundamental rights at issue?
do they have standing?

3. The why.

Why are they really trying to pass or enforce this law?

Is their reason constitutional?
Is the issue a moot point?

Next comes the four step approach to real property. In property, the answer choices will automatically tell you what area of property law the question is asking about. And, just as in contracts, you focus on dates, dollar amounts, and who the parties are.

1. Narrow your focus to triggers.

In addition to dates, dollar amounts and who the parties are, look for general terms. Property law is driven by legal terms in fact patterns. They will lead you to the correct answer choice.

2. What type of property right or interest is at issue?

Ownership types.

few simple, few tail, life estate

Future interests.

reversion, possibility of reverter,
right of entry, remainders, executory int.

Landlord/tenant--non-freehold estates.

Estate for years, periodic tenancy,
tenancy at will, tenancy at sufferance.

Non-possessory.

Easements, profit, licenses, covenants
equitable servitudes.

Conveyances.

Sales of land, deed delivery, recording act
, mortgages.

Concurrent Estates.

Tenants in common, joint tenancy,
tenancy by the entirety.

3. Follow the given statutes to a "T".
4. Is there a written contract or is it only verbal?

Next comes the six step approach to torts. Here you follow the restatement of torts, unless they tell you otherwise or give you a statute to use.

Approaches to crimes and torts are very similar. They are driven by specific words and terms that show INTENT and KNOWLEDGE to commit a crime or do and act that results in harm to another. The triggers here are words of knowledge, mental state, and actions, because they will direct you to the correct answer.

Remember, intent in torts is based on intent to do the act that caused the resulting harm. NOT intent to cause the harm that results.

1. Focus on verbs, action words that describe what the defendant did.

Examples are: Shot, hit, push, stabbed, ran, jumped, drove, robbed, hid, stole, pulled, pushed, dragged, attacked, moved, threw, tossed, grabbed.
2. Focus on adjectives, descriptive words that give rise to the mental state of the defendant.

Examples of mental state are: angry, enraged, sad, depressed, in control, happy, distraught, elated, insane, dissolution, out of control, under the influence, drunk, crazy, mad.
3. Focus on words that tell you what the defendant knew or agreed to.

Examples are: heard, said, told, agreed, discussed, over heard, saw, looked at, knew, knowingly, agreed, thought, mindful, expressed.
4. Who are the parties?
 - a. Who did what to whom and why? Think about possible defenses.
5. What are the possible tort actions?
 - a. Intentional
 - b. Negligence
 - c. Defamation
6. Are all elements of the tort complete and satisfied?

Now we come to the six step approach to Criminal Law. Here you will follow the majority. This is often common law. Except in Burglary ONLY follow the common law UNLESS the examiners ask specifically for Model Penal Code (MPC) or give a statute to use.

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4. What are the possible crimes?

- a. Homicide
- b. Theft Crimes
- c. Crimes against habitation
- d. Crimes against people
- e. SAC (Solicitation, Attempt, Conspiracy).

5. Are all elements of the crime complete and satisfied?

6. What are the possible defenses?